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In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 849

FRANK CUIKSA, *Petitioner*,

v.

THE CITY OF MANSFIELD, *et al.*, *Respondents*.

CLARK DENNY HERTZLER, *Petitioner*,

v.

THE CITY OF MANSFIELD and
GLEN W. MARRIOTT, *Respondents*.

FRANK L. SMITH, *Petitioner*,

v.

THE VILLAGE OF BUTLER, ROBERT E. HARRIS and
RONALD THOMPSON, *Respondents*.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. _____

Miscellaneous Docket.

FRANK CUIKSA, *Petitioner,*

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THE CITY OF MANSFIELD, *et al., Respondents.*

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RONALD THOMPSON, *Respondents.*

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Judges of the Supreme Court of the United States:

Frank Cuiksa, Clark Denny Hertzler, and Frank L. Smith, petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States

Court of Appeals for the Sixth Circuit entered on December 20, 1957 insofar as the said judgment affirmed the judgments of the United States District Court for the Northern District of Ohio, Eastern Division in three (3) separate cases involving the aforesaid petitioners.

OPINIONS BELOW.

Since the three (3) cases involved similar factual situations and the same questions of law, they were argued together on separate records. However, they were discussed jointly in one opinion of the Court of Appeals (App. 1a),* which was unanimous in its holding and which is reported at ____ F. 2d ____ (C. A. 6th Circuit, December 20, 1957).

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254 (1).

QUESTIONS PRESENTED.

Is a municipality, under the provisions of 42 U. S. C. A., Section 1983, liable for depriving an individual of rights, privileges, or immunities secured by the Constitution and laws of the United States?

Is a judge, under the provisions of 42 U. S. C. A., Section 1983, liable for depriving an individual of rights, privileges or immunities secured by the Constitution and laws of the United States?

Is a state executive officer (a village constable) under the provisions of 42 U. S. C. A., Section 1983, liable for

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* "App." references herein are to the Appendix to this petition.

depriving an individual of rights, privileges or immunities secured by the Constitution and laws of the United States?

STATUTES INVOLVED.

The provisions of the Civil Rights Act, 28 U. S. C. A., Section 1343 (3) and 42 U. S. C. A., Section 1983, are printed in the Appendix, *infra*, at page 9a.

AMENDMENT INVOLVED.

The pertinent provisions of the Fourteenth Amendment of the United States Constitution is printed in the Appendix, *infra*, at page 9a.

ARTICLE INVOLVED.

The pertinent provision of Article VI, Clauses 2 and 3, of the United States Constitution is printed in the Appendix, *infra*, at pages 9a-10a.

STATEMENT OF THE CASE.

Although the three (3) cases represented in this petition for certiorari were heard together below and were consequently discussed jointly in one opinion (App. 1a), the facts will be discussed separately here. In each case the petitioners sued in the United States District Court for the Northern District of Ohio, Eastern Division, under the provisions of the Civil Rights Act, Section 1343, Title 28, of the United States Code Annotated, and Section 1983 of Title 42, of the United States Code Annotated, claiming substantial damages by reason of alleged deprivation of rights and privileges secured by the Constitution by the respondents acting under color of a statute or ordinance. The three (3) respective complaints alleged arbitrary,

whimsical, capricious and illegal action on the part of the city or village in which the court was situated and on the part of the judicial officer trying the case, and of the police officers.

In case No. 13,219, the facts are as follows:

On November 6, 1950, the petitioner, Frank Cuiksa, was arrested without a warrant by four (4) police officers of the City of Mansfield, Ohio, who charged him—under the provisions of a void ordinance—with the crime of drunken behavior, a claimed misdemeanor, not committed in their presence. At the time of his arrest, the petitioner was beaten and tortured and subsequently removed to the Mansfield City Prison—a place unfit for human occupancy—before being brought before a magistrate. While incarcerated, the petitioner's demands for a doctor to tend his injuries were completely ignored. On the following day (November 7, 1950), the petitioner was brought before the respondent, Glen W. Marriott, the Judge of the Municipal Court of Mansfield, on a void affidavit which did not set forth any facts constituting a crime and without process or notice of the charge. At this time, the respondent, the said Judge Marriott, berated the petitioner for not pleading guilty and informed him that a lawyer would do him no good and that he would never win a case in his court so long as he was the judge. Without regard to fair play, a jury was illegally impanelled, and after two (2) jury trials and four (4) days of trial—where, among other irregular proceedings, there was no basic adherence to the rules of evidence and witnesses were permitted to give their opinions as to the guilt of the petitioner—the petitioner was convicted of disturbing the peace and good

order of the city by drunken behavior and fined the sum of fifty dollars ($50.00) and costs. The conviction was affirmed by the Ohio Court of Appeals. The petitioner, thereafter, brought this action for $250,000.00 damages against the city and the judge, the respondents herein, and the four (4) police officers. Motions for summary judgment by the city and the judge were granted by the District Court, from which ruling an appeal was taken. The Court of Appeals for the Sixth Circuit affirmed. As of the time of the filing of this petition, the case is still pending in the District Court against the four (4) police officers.

In case No. 13,220, the facts are as follows:

At about 3:00 a.m. on the morning of October 26, 1952, the petitioner, Clark Denny Hertzler, was having a cup of coffee and conducting an orderly conversation with friends in a lunchroom when Marion L. Hardesty, a member of the Mansfield Police Department—without any just cause or excuse—took hold of him and forcibly took him to a police call box. As soon as the said respondent completed his call, he turned to the petitioner and, with a blackjack, proceeded to strike him repeatedly over the head and body. At no time did the petitioner act in a disorderly manner or resist an arrest or in any way interfere with what the officer may have thought was his duty. Several citizens who had gathered as a result of the commotion created by the conduct of the police officer protested the violent and wanton beating of the petitioner, at which time they were held off with a police club while the said officer continued to beat the petitioner, permanently injuring him. Shortly thereafter, the petitioner

was put in a police cruiser with three (3) additional policemen of the Mansfield Police Department, who, while driving the petitioner to the Mansfield City Prison—a place unfit for human occupancy—abused, insulted and mistreated him. During the time of his incarceration, the petitioner was not only denied medical attention for his injuries but he was forbidden to see his wife, who had called at the prison to inquire about his detention and welfare. The next day (October 27, 1952), the petitioner was brought before the respondent, Glen W. Marriott, the Judge of the Municipal Court of Mansfield, and charged with the crimes of disorderly conduct and resisting a police officer. Without regard to fair play, the respondent, the said Judge Glen W. Marriott, proceeded to try the petitioner without any process or notice of the charges, before an illegally impanelled jury where, among other irregular proceedings, there was no basic adherence to the rules of evidence and witnesses were permitted to give their opinions as to the guilt of the petitioner. The jury found the petitioner not guilty of disorderly conduct but guilty of resisting a police officer. The conviction was reversed by the Common Pleas Court. However, the reversal was set aside by the Court of Appeals. The petitioner thereafter brought this action of $250,000.00 damages against the city, the judge of the Municipal Court, four (4) police officers, and the proprietor of the lunchroom. Motions for summary judgment by the city and the judge were granted by the District Court, from which ruling an appeal was taken. The Court of Appeals for the Sixth Circuit affirmed. The complaint was dismissed as to the lunchroom proprietor, but as of the time of the filing of this petition, the case is still pending in the District Court against the police officers.

In Case No. 13,228, the facts are as follows:

On October 8, 1952 the petitioner, Frank L. Smith, was stopped and warned by the respondent, Ronald Thompson, a constable of the Village of Butler, a municipality of the State of Ohio, about the manner in which he was operating his automobile. On October 13, 1952, the said constable filed an affidavit charging the petitioner for passing on the right, a minor traffic violation. Although there was no village ordinance making that an offense, the respondent, Robert E. Harris, the mayor and ex-officio judge, thought there was and tried him under that theory without any process or notice of the charge. The petitioner was found guilty and fined the sum of $20.00 and costs, which he paid. After learning that there was no such ordinance, but that there was an Ohio statute which made such an act an offense, the mayor vacated the judgment under the ordinance but ordered the petitioner to appear and answer a charge of violating the State statute. He ordered a recognizance of $25.00 for his appearance and advised petitioner's counsel that he would consider the fine and costs paid as the recognizance but to inform him if the attorney desired otherwise. No new trial was ever had. The conviction remains set aside. The petitioner, thereafter, brought this action for $200,000.00 damages against the village, the Mayor and ex-officio Judge of the Mayor's Court, and the constable who executed the affidavit charging the petitioner with passing on the right. Motions for summary judgment by the three (3) respondents were granted by the District Court, from which ruling this appeal was taken. The Court of Appeals for the Sixth Circuit affirmed.

ARGUMENT.

The three (3) questions involved herein will be discussed jointly, and the reasons, except where otherwise noted, are to be applied to each question with equal force and effect.

The petition for a writ of certiorari should be granted because the decision of the Court of Appeals for the Sixth Circuit in affirming the judgment of the United States District Court for the Northern District of Ohio, Eastern Division, raises three (3) important questions of federal law involving the interpretation to be given the language of the Civil Rights Act, 42 U. S. C. A., Section 1983, as applied to the principles of immunity inuring to judges, municipalities and public officials in the exercise of their prescribed and official duties.

This Court has held under the "Commerce Clause" that when a state violates the law of the United States, it is unimportant whether it acted in a governmental or private capacity, if it is a person within coverage of the law, it is liable, and can claim no common law or sovereign immunity. *U. S. vs. California*, 297 U. S. 175. The prohibition of a federal statute may not be set aside or its benefits denied, by state common law rules. *Sola Electric Co. vs. Jefferson Electric Co.*, 317 U. S. 173.

It also involves the effect to be given this Court's holding in *Tenney v. Brandhove*, 341 U. S. 367. In addition, the decision is directly in conflict with the case of *Picking v. Penn. R. Co.*, 3 Cir., 151 F. 2d 240, rehearing denied, 152 F. 2d 753, which held that Congress by enacting the Civil Rights Act abrogated the common law immunity of a judicial officer for acts done in the performance of his judicial function. Also, there appears to be some additional confusion among our Circuit Courts as to whether

or not a complaint, alleging as required, violations of the Civil Rights Act, states a cause of action, this under the theory that state common law immunity is the Supreme Law of the Land, which can not be affected by Congress acting within the scope of the "Constitutional Plan" of government.

The common law right of procedural due process of law, of persons accused of crime, as is guaranteed by the Constitution of the United States, is not recognized by the courts of Ohio, only state statutory rights. *State of Ohio vs. Whitmore,* 126 O. S. 381, Syl. 5. The accused person is without remedy by which he can have this Court determine his federal questions, unless the remedy provided by Congress in Section 1983 of Title 42 is available to him and enforcible.

The Court of Appeals denies this remedy. At the close of its opinion, it states "What remedies the plaintiffs have, or should have, is not the question presented by these cases. On the records before us, we think it clear that they are not entitled to the remedy sought by the present actions." It appears to be the view of the Court of Appeals that state common law immunity completely emasculates the statute and renders it nugatory.

In its opinion, the Court of Appeals agreed with the petitioners in that the respective complaints "charged highly irregular proceedings which, if true, might well be found to constitute a denial of due process of law" and that "such alleged arbitrary and irregular proceedings should not be allowed to exist in any of the courts of this country."

The petitioners concede that at common law, a judge who had jurisdiction over the subject matter of the case and over the persons before him was not liable for damages because of an erroneous decision, or even for a de-

cision rendered maliciously and in bad faith. *Bradley v. Fisher*, 13 Wall. 335, 80 U. S. 335. However, it is common knowledge that the Civil Rights Statutes, which were passed immediately after the Civil War, were enacted to supplement and enforce the provisions of the Fourteenth Amendment. The language of the Act (Section 1983, *supra*) is very broad and unqualified. There is nothing in the Act itself or its legislative history to suggest that judges, police officers, mayors, and other public officials were to be exempt from its provisions. The language is all inclusive and embraces "every person" who under color of any law subjects any person to the deprivation of any rights secured by the Constitution and laws of the United States. It follows, therefore, that a close reading of the Act leads one to the compelling conclusion that Congress intended to abrogate the doctrine of immunity of judicial officers as well as of all other public officials and municipalities from civil actions. *Picking v. Penn. R. Co., supra.* Moreover, it is reasonable to presume that Congress knew or must have known of these principles at the time it enacted the Act, and it does seem—in view of the broad and sweeping nature of the language—that if it did not intend to abrogate these well established and deeply rooted principles, it would have said so in clear terms—either in the law or in its legislative history.

In the instant case, the Court of Appeals relied heavily on the decision in *Tenney v. Brandhove, supra*, which it regarded as controlling. In that case, this Court, in holding that the complaint did not state a cause of action, ruled that members of a legislative committee of the State of California who were acting within the sphere of legitimate legislative activity were immune from civil liability and that Congress, in enacting the Civil Rights Act, did not intend to abrogate this immunity. The petitioners

submit that this case is not pertinent for the reason that members of a legislative committee act in a field of permanent immunity from substantial liability which is derived from Article I, Section 6, Clause 1, of the U. S. Constitution. Consequently, no assumption would follow that Congress has constitutional power to limit the freedom of state legislators acting within their traditional sphere. *Tenney v. Brandhove, supra,* at page 376. There is no such constitutional immunity for the acts of judicial officers, public officials and the like. Hence, the conclusion is inescapable that Congress, by enacting the Civil Rights Act, intended to supersede the common law principles of immunity to the extent indicated by the Act and in fact did so.

As recently as in 1951, this Court—in the case of *Williams v. U. S.*, 341 U. S. 97—had occasion to construe the provisions of 18 U. S. C. A., Section 242, which is the criminal counterpart of the Civil Rights Act. The pertinent part of Section 242 reads as follows:

> "Whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States * * *, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

In upholding the constitutionality of Section 242, the Court held, in a 5-4 opinion, that a special police officer, who, acting under color of State law, obtains a confession from a suspect by force and violence, may be held criminally liable for depriving a person of his civil rights.

Consequently, it would appear to the petitioners that, if this Court upholds the criminal prosecution of one,

under the foregoing circumstances, for the violation of the criminal counterpart of the Civil Rights Act, then it would necessarily follow that a person who has sustained the deprivation of his necessary rights civilly could seek redress under the provisions of the Civil Rights Act.

CONCLUSION.

For the foregoing reasons, the petitioners pray that a writ of certiorari be issued to the Court of Appeals for the Sixth Circuit to review its judgment herein.

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APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Decided December 20, 1957.)

Before: ALLEN, McALLISTER and MILLER, Circuit Judges.

MILLER, Circuit Judge. These three appeals, involving similar factual situations and the same questions of law, were heard together on separate records. They will be discussed jointly in this one opinion.

In each case the plaintiff brought suit in the United States District Court under the Civil Rights Act, Section 1983, Title 42, U. S. Code; Section 1343, Title 28, U. S. Code, claiming substantial damages by reason of alleged deprivation of rights and privileges secured by the Constitution by the defendants acting under color of a statute or ordinance.

In case No. 13,219, appellant was convicted in the Municipal Court of the city of Mansfield, Ohio, after a jury trial of disturbing the peace and good order of the city by drunken behavior, in violation of an ordinance of the city and fined $50.00. The conviction was affirmed by the Ohio Court of Appeals. The appellant thereafter brought this action for $250,000 damages against the city, the judge of the Municipal Court, and four police officers. Motions for summary judgment by the city and the judge were granted by the District Court, from which ruling an appeal was taken. The case is still pending in the lower court as to the four police officers.

In case No. 13,220, appellant was tried before a jury in the Municipal Court of the city of Mansfield, Ohio, for disorderly conduct and resisting a police officer. The jury found him not guilty on the first charge and guilty

on the second. The conviction was reversed by the Common Pleas Court. The reversal was subsequently set aside by the Court of Appeals. This action was brought by the appellant for $250,000.00 damages against the city, the judge of the Municipal Court, four police officers, and the proprietor of a lunchroom. Motions for summary judgment by the city and the judge were granted by the District Court, from which ruling an appeal was taken. The complaint was dismissed as to the lunchroom proprietor, but is still pending in the lower court against the police officers.

In case No. 13,228, the appellant was tried in the Mayor's Court of the village of Butler, Ohio, for a minor traffic violation of passing on the right. There was no village ordinance making that an offense, although the Mayor, as ex-officio judge, thought there was and tried him under that theory. He was found guilty and fined $20.00 and costs, which he paid. After learning that there was no such ordinance, but that there was an Ohio statute which made such an act an offense, the Mayor vacated the judgment under the ordinance but ordered the appellant to appear and answer a charge of violating the State statute. He ordered a recognizance of $25.00 for his appearance and advised appellant's counsel that he would consider the fine and costs paid as the recognizance but to inform him if the attorney desired otherwise. No new trial was ever held. The conviction remains set aside. The appellant brought this action for $200,000.00 damages against the village, the Mayor and ex-officio Judge of the Mayor's Court and the constable who executed the affidavit charging appellant with passing on the right. Motions for summary judgment by the three defendants were granted by the District Judge, from which ruling an appeal was taken.

The respective complaints alleged arbitrary, whimsical, capricious and illegal action on the part of the city or village in which the court was situated and on the part of the judicial officer trying the case. In view of the disposition which we make of the cases, it is unnecessary to go into the details of the respective trials. It is sufficient to say that the complaints charged highly irregular proceedings which, if true, might well be found to constitute a denial of due process of law. We agree with the appellants that such alleged arbitrary and irregular procedure should not be allowed to exist in any of the courts of this country. However, the allegations were denied by the defendants and since the cases were disposed of as a matter of law on motions for summary judgment, there was no trial or findings on the factual issues on that aspect of the cases. Whether such arbitrary and irregular procedure took place and, if so, how it should be corrected, is not the question before us. We are restricted on these appeals to a consideration of the correctness as a matter of law of the granting of the motions for summary judgment.

The District Judge sustained the motions for summary judgment on the authority of our ruling in *Kenney v. Fox*, 232 F. (2d) 288, C. A. 6th, cert. denied, 352 U. S. 855, 856, from which rulings these appeals were separately prosecuted.

In *Kenney v. Fox, supra*, we held, upon the authority of *Bradley v. Fisher*, 13 Wall. 335, and numerous other cases referred to in the opinion, that judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts where jurisdiction exists over the subject-matter and the defendant, even though such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly; that some of

the most difficult questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised; that the manner and extent in which the jurisdiction is exercised are generally as much questions for the determination of the judge as other questions involved in the case, although upon the correctness of his determination in these particulars the validity of the judgment may depend; that against the consequence of their erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort; that for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction, the judges of these courts can only be reached by public prosecution in the form of impeachment, or in such other form as may be specially prescribed; that such a rule is necessary as a matter of public policy for the protection of judges against disappointed litigants who, in attempting to seek redress through civil action against a judge who has decided a case against them, could always include in their complaint allegations of malicious or corrupt motives.

As shown by the cases referred to in that opinion, this principle of law is of ancient origin and well settled, and was not abrogated or modified by the passage of the Civil Rights Act. In our opinion, this is the necessary conclusion to be drawn from the recent opinion of the Supreme Court in *Tenney v. Brandhove*, 341 U. S. 367, which we regard as controlling on this issue. Appellants rely chiefly upon *Picking v. Penn. R. Co.*, 151 F. (2d) 240, C. A. 3rd, and *McShane v. Moldovan*, 172 F. (2d) 1016, C. A. 6th. It is sufficient to say that these cases were care-

fully considered by us in *Kenney v. Fox, supra,* wherein we pointed out that the ruling in the *Picking* case was prior to the decision of the Supreme Court in *Tenney v. Brandhove, supra,* was contrary to the great weight of authority and was not being followed by us. We also pointed out that the ruling in the *McShane* case did not involve the question of judicial immunity and, in any event, must yield to the later ruling of the Supreme Court in *Tenney v. Brandhove, supra.*

Appellants, however, contend that the ruling in *Kenney v. Fox, supra,* is not applicable because the alleged deprivation of rights occurred there in a civil proceeding, while in the present case it arises out of a criminal proceeding. No authority is cited for this claimed distinction. Although the point apparently was not expressly raised, in the following cases we applied the ruling in *Kenney v. Fox, supra,* to cases arising out of criminal proceedings. *Watson v. Skillman, et al.,* 234 F. (2d) 659, C. A. 6th, *Copley v. Sweet, et al.,* 234 F. (2d) 660, C. A. 6th; *Thompson v. Heither, et al.,* 235 F. (2d) 176, C. A. 6th. In addition, we believe the matter was settled for the present purposes by the following statement of the Supreme Court in *Bradley v. Fisher, supra,* 13 Wall. 335, 352, "But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offences committed within a certain district, should hold a particular act to be a public offence, which is not by the law made an offence, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for

his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked."

It is equally well settled that governmental immunity exists with respect to the municipality, City of Mansfield and Village of Butler, in their governmental functions, which has not been abrogated by the Civil Rights Act. *Cobb v. City of Malden*, 202 F. (2d) 701, 703, C. A. 1st; *Agnew v. City of Compton*, 239 F. (2d) 226, C. A. 9th, cert. denied, 353 U. S. 959; *Charlton v. City of Hialeah*, 188 F. (2d) 421, C. A. 5th; *Aldrich v. City of Youngstown*, 106 O. S. 342, *Tenney v. Brandhove, supra*, 341 U. S. 367.

In case No. 13,228, a constable of the village of Butler was also made a defendant. The constable filed an affidavit against the appellant Smith charging him with passing on the right, which initiated the prosecution. Appellant was not placed in custody by the constable or physically restrained. At the trial the constable testified as a witness. We held in *Kenney v. Fox, supra*, 232 F. (2d) 288, 290, that neither an attorney who prepared the papers initiating the prosecution, nor the prosecuting attorney who prosecuted the case, was liable for damages under the Civil Rights Act. The actions of the constable in initiating the prosecution and in testifying did not deprive the appellant of any constitutional right. Nor is he responsible for the subsequent actions and rulings of the judge. *Whittington v. Johnson*, 201 F. (2d) 810, 811-812, C. A. 5th, cert. denied, 346 U. S. 867, cited by us with approval in *Kenney v. Fox, supra*, and *Barlett v. Weimer*, 244 F. (2d) 955, C. A. 6th. Appellant Smith had no cause of action under the Civil Rights Act against the constable.

We are not unmindful of the fact that if the allegations of the respective complaints are accepted as true, each of the appellants has been convicted of a criminal offense through judicial proceedings highly irregular and

prejudicial in nature for which he seeks redress. Many of the acts and rulings of which they complain constituted proceedings which were subject to review by an appellate court, which, if found to be illegal or prejudicially erroneous, would invalidate the judgment of conviction. Insofar as any individual personal rights have been violated by reason of assault and battery, false imprisonment, slander, or other tort, the present ruling does not dispose of such claims against the individual who may have committed such tort. *Agnew v. City of Compton, supra,* 239 F. (2d) 226, 231, C. A. 9th. What remedies the plaintiffs have, or should have, is not the question presented by these cases. On the records before us, we think it is clear that they are not entitled to the remedy sought by the present actions.

The judgment in each case is affirmed.

JUDGMENT, Case No. 13,219.

(Filed December 20, 1957.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT, Case No. 13,220.

(Filed December 20, 1957.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT, Case No. 13,228.

(Filed December 20, 1957.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

STATUTES AND AMENDMENT INVOLVED.

28 U. S. C. A., Section 1343. Civil Rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * * * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U. S. C. A., Section 1983, Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

United States Constitution, Fourteenth Amendment.

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

SECTION 5.

The Congress shall have the power to enforce by appropriate legislation, the provisions of this article.

United States Constitution, Article VI, Clause 2, Supreme Law of Land.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the

United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Article VI, Clause 3, Oath of Office.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.